



MORTGAGE LOAN BULLETIN

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Fall 2005

Misrepresentations of YSPs result in license suspensions

What is a broker's responsibility to disclose compensation to his or her clients? Can a broker disclose one set of facts to the client up front in a loan transaction and then turn around and collect substantially more commissions and fees at close of escrow with little or no notice to the clients? The following describes the practice of one corporate real estate broker and its designated officer that ran afoul of the Real Estate Law. Specifically, the broker concealed and failed to timely disclose to borrowers its true compensation.

Business and Professions Code Section 10240 establishes the requirement of a real estate broker negotiating a loan to cause to be delivered a mandated disclosure statement to the borrower within 3 days of receiving the loan application. The purpose of the disclosure statement is to give the client a "good faith" estimate of the costs, expenses and terms of the loan, including the broker's compensation whether paid directly by the borrower or paid by the lender in the form of a yield/spread premium or other rebate. Business and Professions Code Section 10176(a) gives the Department of Real Estate the authority to discipline a real estate licensee for making substantial misrepresentations or omitting material facts to the principal in a transaction.

An investigation into this corporate broker's practices revealed a

pattern of initially disclosing to the client that it would receive a small yield/spread premium rebate as part of its compensation. Then the broker would collect substantially higher commissions, fees and rebates, and would only disclose such just before the close of escrow. Here are the facts as disclosed by the investigation:

In each of these loan transactions, the broker substantially misrep-

resented the true amount of compensation being earned—information that was material to the borrowers' decisions to complete the transactions. The investigation also revealed that the broker failed to deliver the required disclosure statement and/or failed to retain a true and correct copy of the disclosure statement in several transactions. It also revealed that the

designated officer failed to exercise reasonable supervision over the activities of the licensed corporation and employees that allowed these practices to occur.

An Accusation was filed against both the corporation and designated officer. Both waived their right to an administrative hearing and stipulated to disciplinary action that was approved by the Real Estate Commis-

Loan#	Fees Disclosed	Fees Collected at COE	YSP Collected POC	Overcharge
1	\$1,800	\$4,560	\$680	\$3,440
2	\$2,625	\$1,445	\$2,020	\$840
3	\$1,880	\$1,795	\$1,807	\$1,722
4	\$360	\$0	\$3,555	\$3,195
5	\$1,280	\$1,076	\$4,844	\$4,640
6	\$1,030	\$1,030	\$2,250	\$2,250
7	\$1,000	\$810	\$1,485	\$1,295
8	\$1,250	\$1,950	\$1,501	\$2,201
9	\$1,250	\$1,580	\$553	\$883
10	\$450	\$780	\$1,204	\$1,534

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sioner. Both licenses were suspended for 100 days; however, the suspensions would be stayed upon a payment of \$10,000 for each licensee. The designated officer paid the fine; however, the corporation did not, and its license was suspended pursuant to the settlement. Any salesperson licensees were automatically terminated

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DRE's Internet address is:
<http://www.dre.ca.gov>



Misrepresentations

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from the corporation as well as all fictitious business names and branch office licenses until such time as the 100-day suspension ends. In addition to the suspensions, monetary penalty, and attorney fees incurred by the broker, both the corporation and designated officer's public license information on the Department's Web site will reveal the disciplinary actions to any consumers or lenders who contemplate doing business with the broker. The unanticipated consequences of the broker's actions may prove to be even more costly in the long run.

Every broker and salesperson is required by the Real Estate Law to provide their principals in a transaction with all of the material facts that are pertinent to the clients' decision to complete a transaction when the information becomes known to the licensee. Making material misrepresentations or withholding material facts does expose the licensee to disciplinary action and potential civil action. 🏠

Conducting sales and loan activities

Some agents want to conduct real estate activities in both real property sales and mortgage loans. The Department of Real Estate salesperson license authorizes agents to perform each of these activities. However, it is important to keep in mind that Section 10132 of the Business and Professions Code directs that a salesperson be employed by a licensed real estate broker, and Section 10137 of the B&P Code further specifies that a salesperson receive all of his or her compensation from the employing broker. This serves to limit a salesperson to those real estate activities conducted by his or her employing broker and those that the broker is willing to supervise. Failure to exercise reasonable supervision over the activities of his or her salespersons constitutes grounds for disciplinary action per Business & Professions Code Section 10177 (h).

If the employing broker holds two or more licenses, such as an individual and a corporate license, or is the officer of two or more DRE licensed corporations, the salesperson can only be employed by one of these. If the lending activities for a broker are performed by one such corporation and the sales activities by another, the licensed salesperson can only be employed by one of these licensees and all of the real estate activities generated by that agent must be conducted in the name of the corporation that employs him or her.

If the employing broker does not conduct both sales and loan activities, or does not wish to supervise an agent that does both, then the salesperson cannot conduct both. If a broker wishes to employ salespeople to conduct both activities, then the broker must employ the salespeople under only one license.

It should be noted that, pursuant to Commissioner's Regulation 2904, a real estate licensee who acts as the agent for either party in a sales transaction and also receives, or anticipates receiving, compensation for obtaining the loan, must disclose to both parties (buyer and seller), prior to closing of the transaction, the form, amount, and source of the compensation for the loan. The Department of Real Estate does not publish a form for this purpose, therefore the broker may use any type of disclosure that would satisfy the

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Doing business in other states

From time to time the Mortgage Loan Activities Unit receives a call from a broker who wants to solicit and negotiate loans in other states. While California is a “licensing state” not all other states have similar laws. Anyone who wishes to do business in another state will need to contact the licensing officials in that state to determine what, if any, license is required. Even if no license is required in another state, California Business and Professions Code Section 10130 does require that any person who engages in the business, acts in the capacity of, advertises or assumes to act as a real estate broker or salesperson *within this state* must hold a California real estate license. That includes conducting mortgage loan activities in other states from *within* California unless otherwise exempted from the licensing requirement pursuant to Business and Professions Code Section 10133.1(a) – for example, a CFL or RML licensee, a bank, savings institution, or credit union, etc.



The Web site of the Association of Real Estate License Law Officials (ARELLO) lists the names, addresses and telephone numbers for each member real estate licensing agency in North America and is a good resource for anyone interested in doing business in other states. The Web site address is www.arello.org; choose CONSUMER, then REGULATORY AGENCIES. 📄



The eLicensing online system available at www.dre.ca.gov offers expedited processing of the following services any time of the day or week:

- 📄 Broker and salesperson license renewals
- 📄 Duplicate license requests (broker, salesperson, officer and branch office)
- 📄 Salesperson requests to change employing broker
- 📄 Broker certification of salesperson employment
- 📄 Licensee mailing address changes
- 📄 Broker main office address changes
- 📄 Electronic Real Estate Bulletin
- 📄 Examination services: *reschedule exam date; apply to re-take exam; change exam mailing address; view exam records; check scheduled exam date; time and location; view exam results; request duplicate schedule notices and result notices; see if original license has been issued.*

You must have an existing examination record or license on file with the DRE to use eLicensing. To use eLicensing for the first time, you need to register at www.dre.ca.gov to create a user name and password.

Broker Options for Real Estate Activities

Licensed real estate brokers can conduct licensed activities for more than one entity, as defined in Section 10131 of the Business and Professions Code: “A real estate broker... does or negotiates to do one or more of the following acts for another or others.” In short, a broker may operate under his individual broker license and/or as the designated officer for one or more licensed real estate corporations.

A broker also has the option of working for another broker or licensed corporation by entering into a Broker-Salesman Agreement pursuant to Commissioner’s Regulation 2726 as a broker-associate. When this option is exercised, it is important that the broker-associate report additional addresses to the DRE. For instance, if the broker-associate will be conducting licensed activities at the address of the employing broker,

then the broker associate must add this additional address to his or her license as a “branch” address if it is different from the main office address. This is done using the form RE 203, Branch Office Application. If some of the activities will be conducted at the broker-associate’s

A broker may operate under his broker license and/or as the designated officer for other Real Estate Corporations.

business address, then the *employing* broker must apply for a branch office license to add the broker-associate’s address. See Business and Professions Code Section 10163 for branch offices. There is no requirement for the employing broker to take possession of the broker-

associate’s license certificate as he or she would for a salesperson licensee.

The Branch Office Application, RE 203, can be printed from our Web site at www.dre.ca.gov under Forms (Licensing). 📄

CalHFA loan programs have big impact on affordability



from the California Housing and Finance Agency

In March of 2005, the California Housing Finance Agency (CalHFA) debuted two new programs to help residents of the Golden State bridge the ever-growing housing affordability gap. The *interest only PLUSSM* loan, and HomeOpenersSM*, a Mortgage Protection Program were seen as ways for Californians to make inroads against the rising price of housing.

What CalHFA did not expect was just how quickly those inroads would be made. In less than six months since the programs have been introduced, *interest only PLUSSM* has received over 1,000 reservations for over \$278 million — over 28% of our loan volume. With this loan's below market fixed rate, and interest-only payments for the first five years of a 35-year loan, residents of 45 of California's 58 counties have realized that CalHFA has offered a new approach to affordable housing.

One of a new homebuyer's biggest fears is that of losing their job. HomeOpenersSM, which takes care of the buyer's mortgage payment for up to six months if he or she is involuntarily unemployed, helps these new homebuyers put those fears to rest. Over 800 borrowers

have taken advantage of the peace-of-mind offered by this new program. Best of all, it comes at no additional cost to the borrower.

"California's Affordability Index continues to be in the mid-teens," said Theresa Parker, Executive Director of CalHFA. "Nonetheless, we are working hard to keep the American Dream within reach for as many Californians as possible, through our 100% financing loan programs, innovative approaches such as HomeOpenersSM and overall commitment to excellence."

CalHFA was chartered in 1975 as the state's affordable housing bank, and has been helping provide affordable housing to Californians for over 30 years. More than 134,000 families live in a home of their own with a mortgage they can afford through the over \$14 billion in non-taxpayer funds that CalHFA has invested.

CalHFA also offers several down payment assistance programs that can often help first-time buyers get into their homes with no cash up front. To find out about these and other homeownership programs, visit www.calhfa.ca.gov or call (800) 789-2432. 🏠

* HomeOpeners is a service mark of GE Mortgage Holdings, LLC.

Sales and loan activities

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requirement. It is also worth noting that certain federally insured loan programs, such as FHA insured loans, preclude a licensee from representing the buyer and receiving compensation for arranging the loan. It is a good idea to check the lender's underwriting guidelines before representing a buyer in both the purchase and loan transaction.

Questions regarding mortgage loan issues and compliance questions should be directed to the Mortgage Loan Activities Unit at (916) 227-0770. 📞